

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO,

Plaintiff,

- against -

ALAN GELBSTEIN, in his official and individual capacity; BOSHRA VAHDATLAMAS, (also known as BUSHRA VAHDAT) in her official and individual capacity; IDA TRASCHEN, in her official and individual capacity; ELIZABETH PRICKETT-MORGAN, in her official and individual capacity; JEAN FLANAGAN, in her official and individual capacity; VINCENT PALMIERI, in his official and individual capacity; DANIELLE CALVO, in her official and individual capacity; SADIQ TAHIR, in his individual capacity; PEC GROUP OF NY, INC.; DAVID SMART, in his individual capacity; JOHN AND JANE DOE,

Defendants.

No. CV 18-2710-MKB

DECLARATION OF
MARK SIEGMUND

MARK SIEGMUND hereby declares, pursuant to 28 U.S.C. § 1746, that:

1. I am an attorney and an Assistant Attorney General at the Office of the New York State Attorney General, Barbara Underwood, counsel for defendants Alan Gelbstein, Bushra Vahdat, Ida Traschen, Elizabeth Morgan (formerly Prickett-Morgan), Jean Flanagan, Vincent Palmieri, and Danielle Calvo (collectively, the “State Defendants”) in the above-captioned action. I submit this Declaration, based on personal knowledge and my review of legal documents maintained by this Office in the regular course of business, in support of the State Defendants’ motion to dismiss.

2. Attached as **Exhibit 1** is a true and correct copy of the Verified Petition filed in a CPLR Article 78 proceeding commenced by the plaintiff herein, Mario Capogrosso, in the Supreme Court of the State of New York, Kings County, titled *Capogrosso v. New York State*

Department of Motor Vehicles, Index No. 7738/12, together with the exhibits thereto.

3. Attached as **Exhibit 2** is a true and correct copy of an Affirmation by Administrative Law Judge (“ALJ”) Alan Gelbstein, dated May 3, 2012, which was submitted by respondent New York State Department of Motor Vehicles (“DMV”) in the 2012 state court proceeding.

4. Attached as **Exhibit 3** is a true and correct copy of an Affirmation by Ida Traschen, former First Assistant Counsel at the DMV’s Office of Counsel, dated April 11, 2012, which was submitted by the DMV in the 2012 state court proceeding, together with the exhibits thereto. Individuals’ home addresses and dates of birth have been redacted in certain of the exhibits for privacy.

5. Attached as **Exhibit 4** is a true and correct copy of a letter from Serwat Farooq, an Assistant Attorney General at the Office of the New York State Attorney General, Barbara Underwood, which appeared on behalf of the DMV in Mr. Capogrosso’s 2012 state court proceeding, to Chris McDonough, Esq., at McDonough & McDonough, LLP, Mr. Capogrosso’s counsel in that proceeding, dated May 15, 2012. Ms. Farooq stated in that letter, *inter alia*, that the DMV had pre-approved an anger management course proposed by Mr. Capogrosso, and that Mr. Capogrosso would be permitted to resume practicing at the TVB if he submitted proof of successful completion of the anger management course. Ms. Farooq warned, however, that if Mr. Capogrosso appeared at the TVB in the future, “he must strictly adhere to the standards of conduct required of attorneys appearing before State courts.” Ex. 4 at 2 (emphasis in original).

Mr. Farooq also stated:

Threatening conduct by Mr. Capogrosso—such as punching a wall, steel beam, or the air in the presence of another person, or proclaiming that punching heavy objects does not cause him any pain—verbal threats of physical violence, and verbal abuse including the use of ethnic slurs will not be tolerated. These behaviors

shall subject Mr. Capogrosso to a prohibition from appearing on behalf of DMV licensees at any TVB office for a period up to and including five years. Please be further advised that *in the event that Mr. Capogrosso commits an act of physical violence, he shall be immediately and permanently barred from appearing on behalf of DMV licensees at TVB offices.*

Id. (emphasis added).

6. Attached as **Exhibit 5** is a true and correct copy of a letter from Ms. Farooq to Jacqueline A. Rappel, Esq. at McDonough & McDonough, LLP, dated June 20, 2012, in which Ms. Farooq stated, *inter alia*, that “Mr. Capogrosso may appear on behalf of his clients at Traffic Violation Bureau [] offices as of June 27, 2012.” Ms. Farooq also stated:

Please be advised that if and when Mr. Capogrosso appears at a TVB office, he must strictly adhere to the standards of conduct required of attorneys appearing before State courts. Threatening conduct by Mr. Capogrosso, verbal threats of physical violence, and verbal abuse including the use of ethnic slurs will not be tolerated. *DMV reserves all rights to respond to future misconduct including, if warranted, by immediately and permanently barring Mr. Capogrosso from appearing on behalf of DMV licensees at TVB offices.*

Ex. 5 (emphasis added).

7. Attached as **Exhibit 6** is a true and correct copy of the Stipulation of Discontinuance, signed by counsel for Mr. Capogrosso and counsel for the DMV, dated June 21 and June 22, 2012, which was filed with the Supreme Court of the State of New York, Kings County in Mr. Capogrosso’s 2012 state court proceeding.

8. Attached as **Exhibit 7** is a true and correct copy of a letter from Plaintiff to Elizabeth Morgan (formerly Prickett-Morgan), dated March 20, 2015.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: August 15, 2018
New York, New York


MARK SIEGMUND